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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG.**

Case Number: 2026/40484

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|-----|---|
| (1) | REPORTABLE: YES / NO |
| (2) | OF INTEREST TO OTHER JUDGES: YES /NO |
| (3) | REVISED: NO |

March 2026

DATE

SIGNATURE

Application for Variation

UNLAWFUL OCCUPIERS OF ERF 7[...] E[...] TOWNSHIP

Applicant

And

K2012150042 (SA) (PTY) LTD

First Respondent

**CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

Second Respondent

Application for Contempt of Court.

K2012150042 (SA) (PTY) LTD

Applicant

And

UNLAWFUL OCCUPIERS OF ERF 7[...] E[...] TOWNSHIP

First Respondent

THE CITY OF JOHANNESBURG

Second Respondent

SETTLEMENTS, JOHANNESBURG: PATRICK PHOPHI

Third Respondent

EXECUTIVE MAYOR: DADA MORERO

Fourth Respondent

MUNICIPAL MANAGER: FLOYD WARREN BRINK

Fifth Respondent

In re:

K2012150042 (SA) (PTY) LTD

Applicant

and

**UNKNOWN OCCUPIERS OF ERF 7[...] E[...]
TOWNSHIP**

First Respondent

**CITY OF JOHANNESBURG METROPOLITAN
MUNICIPALITY**

Second Respondent

JUDGMENT

NOKO J

[1] On 17 March 2026, I granted an order for the variation of an eviction order, without reasons, in the following terms:

1. The forms, time, periods, and service required by the rules are dispensed, and this matter is heard as one of urgency in terms of Uniform Rule 6 (12).
2. The Second Respondent, particularly the Mayor and Municipal Manager are directed to present themselves before this court in person on **14 April 2026** at 10h00 to answer the following:
 - 2.1. What steps have been or are being taken to provide TEA to the Occupiers as per the order of Mdalana-Mayisela J dated 26 November 2025?
 - 2.2. Where is the TEA allocated, and what steps are being taken to make that TEA available to the Occupiers?
 - 2.3. A specific address where the Occupiers are to be relocated that TEA and the logistics of such relocation by the Second Respondent.
3. In the event that the Occupiers are not relocated by 31 March 2026, a variation of the eviction dates of the Justice Mdalana-Mayisela J order dated 26 November 2025, would be **1 May 2026**.
4. The Second Respondent is directed to provide Temporary Emergency Accommodation to the qualifying unlawful Occupiers by not later than **30 April 2026**.
5. The first Respondent is directed to maintain security personnel at the property until **30 April 2026**.
6. Paragraphs 1 to 8 of the order of Mdalana-Mayisela J dated 26 November 2025 are suspended pending the implementation of prayer 2 of this order.
7. The Second Respondent is liable to pay costs of this Application on an attorney and own client scale.
8. The First Respondent's application for Contempt of Court is struck off the roll for lack of urgency.

[2] These are the reasons.

[3] As background, the first respondent obtained an eviction order of the applicants ("Occupiers") from the first respondent's ("Owner") property, to wit, Erf 7[...], E[...]

Township (“the Property”). The second respondent (“the City”) was ordered to provide the Occupiers with Temporary Emergency Accommodation (“TEA or the Accommodation”). The eviction order was varied several times to give the City additional time to arrange the TEA. The latest variation extended the deadline to provide the accommodation until 31 March 2026, with eviction scheduled for 1 April 2026. The City was also required to notify the Occupiers on or before 10 March 2026 of the premises where the relevant Occupiers will be relocated.

[4] The City failed to provide the update on 11 March 2026 as ordered, and the Occupiers then instituted these proceedings on an urgent basis seeking an order directing the officials of the City to appear before the Court and explain the steps taken to provide the accommodation for the Occupiers as ordered by the court in April 2025. The application is predicated on section 4(12)¹ of the Prevention of Unlawful Occupation and Illegal Eviction Act² (“*the PIE Act*”). The Occupiers have, in addition, sought an order varying the date of eviction to a later date whilst the officials of the City, *inter alia*, attend court and explains the steps taken to comply with the court order.

[5] The first and second respondents oppose the application.

[6] At the same time, the Owner launched an urgent application for contempt against the Mayor, Mr Dada Morero (“*Mr Morero*”) and the Municipal Manager, Mr Floyd Brink (“*Mr Brink*”) for an order committing them to prison for contempt. The Owner launched the proceedings after the Occupiers’ application and made a request to the senior Judge that the two applications serve before the same judge. As such there are two applications before me.

[7] The applicants contend that the second respondent has failed to comply with an order of court to provide accommodation as directed by the Court and, to this end, the officials should attend court to proffer an explanation for their failure to comply. To this

¹ Section 4(12) of the PIE Act provides that, “any order for the eviction of an unlawful occupier or for the demolition or removal of buildings or structures in terms of this section is subject to the conditions deemed reasonable by the court, and the court may, on good cause shown, vary any condition for an eviction order.”

² 19 of 1998.

end, the Occupiers specifically sought an order directing the Municipal Manager and the Mayor to appear in person before the court.

[8] The Owner opposes the relief sought by the Occupiers on the basis that the Owner is prejudiced by the prolonged unlawful occupation of the property, and that its end is not on the horizon. In addition, the City has failed to meet the date of 10 March 2026, and soon thereafter, its attorneys withdrew as attorneys of record. The said attorneys were subsequently reinstated, and a supplementary affidavit was then filed. Moreover, the Owner is prejudiced as it was ordered to provide security at the property during the occupation. The City has not demonstrated any intention to comply with the order, and, in its affidavit, it has explicitly stated that they are unable to give effect to it due to insufficient funds, the Owner averred.

[9] In any case, the Owner's argument continued, the eviction order is not conditional on the TEA being provided, and therefore the variation of order is not necessary. However, it should also be noted that the TEA would only be given to eligible Occupiers, and it was previously mentioned by the City that some Occupiers would not qualify for the accommodation. Accordingly, the court is inclined to dismiss the request to change the order with costs, especially since the City has stated it would not provide the TEA because it cannot afford to do so. Additionally, the application by the said Occupiers is incompetent, as the City should have the party that requested the court for the variation.

[10] In support of its application for contempt of court against Executive Mayor, Dada Morero, Municipal Manager, Floyd Brink, and Director of Human Settlement, Johannesburg Development Agency, Oupa Nkoane, functionaries of the City, the Owner contended that the issue of eviction and the refusal of the City to comply with order became urgent and was launched on the backdrop of the Occupiers' urgent application for the variation of the order of eviction.

[11] The City's counsel submitted that the City is unable to provide the TEA due to a lack of funding, and in the premises, they are not opposing the application for variation of the eviction order instituted by the Occupiers. Due to its financial predicament, the City

intends to launch an application for rescission or variation of the portion of the order directing it to provide the TEA.

[12] Regarding the urgent application for contempt, counsel for the City argued that the application was extremely urgent and did not follow court rules or practice directives. The Owner was aware that the City is a large organization and that its attorneys had withdrawn as lawyers of record. The Owner's claim that contempt of court applications is always inherently urgent is unsubstantiated, and there is authority³ in this division, which clearly states there is no such thing as an inherently urgent application. The argument that the application was also set down on the urgent roll simply because the Occupiers filed theirs is entirely untenable and unfounded according to South African jurisprudence.

[13] The counsel for the Occupiers argued in reply that it is not correct to say that the City is suffering damages from being ordered to keep security personnel on the property, as the court has explicitly directed that the City should bear the associated costs. In any event, the Owner still has the option to institute a damages claim against the City if no payment is effected in respect of the costs for security services on the property. When asked about the reasons for not initiating contempt of court proceedings against the officials of the City, the counsel replied that such proceedings have been instituted and are pending, although they have been instituted in the normal roll. The Occupiers' counsel found it difficult to dispel the impression created that their decision to pursue contempt proceedings against the City in a normal court, despite the City's continued unfulfilled promised timelines, and the fact that the order has been altered multiple times to accommodate and justify non-compliance, appears to condone the misconduct of the City. This is reinforced by the submission on behalf of the City, which stated that it supports the Occupiers' application for a variation of the order.

[14] Counsel for the Occupiers further submitted that the City's history of failing to comply within the prescribed time allowed previously suggests that the court may need to grant a longer extension to accommodate the City's situation. When pressed to specify

³ *Volvo Financial Services Southern Africa (Pty) Ltd v Adamas Tkolose Trading CC* (2023/067290) [2023] ZAGPJHC 846 (1 August 2023).

what he considered a reasonable time, the counsel stated that, given the track record, six months would be a reasonable period.

Issues for determination

[15] The issues for determination are whether the Occupiers' application for variation and other relief is urgent and whether a case has been made for variation. Secondly, to determine whether the application by the Owner met the requirements both for urgency and the requirements for contempt of court.

Legal principles and discussion

[16] It is well established that an application for urgent relief must be underpinned by a compelling argument explaining the reason for the urgency, and a litigant must successfully demonstrate that no substantial redress could be obtained if the case proceeds on the normal process. Furthermore, the urgency should not be self-created.⁴

[17] Concerning the application for variation, the Occupiers instituted urgent proceedings after realising that the City had failed to comply with the order requiring them to notify the Occupiers of the TEA on 10 March 2026.⁵ In the premises, there is no evidence that the urgency was self-created. Also, I find that the application is indeed urgent, having regard to the possibility of rampant homelessness if the eviction is carried out without the City having provided TEA as ordered.

[18] Despite the previous points, it is troubling that the Occupiers continue to repeatedly seek a variation of the order to extend the deadline for the City to provide TEA; therefore, their contempt of court application should have been filed on an urgent basis. In response, the City has taken a passive stance and, despite commitments to comply with the court order, has not taken any steps to seek an extension for its failure to comply, apart from its counsel stating that efforts are underway to file an application for the rescission or variation of the order.

⁴ See *East Rock Trading 7 (Pty) Ltd and Another v Eagle Valley Granite (Pty) Ltd and Others* (11/33767) [2011] ZAGPJHC 196 (23 September 2011)..

⁵ The order provides that "the second respondent shall notify applicants and the first respondent on or before 10 March 2026 of the premises to where the relevant applicant will be relocated".

[19] The Occupiers' request for a six-month extension for the City to comply with a court order, as the previous shorter extension did not yield any results⁶ is not warranted in the face of the City having stated that they would not comply with the order due to paucity of funds. The said request by the Occupiers unsettlingly appears to advance the City's course. The argument relating to the paucity of funding was found to be unsustainable by the Constitutional Court in *Charnell*,⁷ where the court, *inter alia*, held that "The right to access to adequate housing, especially in emergency situations, is a fundamental human right that demands immediate attention. This court cannot ignore the City's failure to progressively realise its constitutional obligation in terms of section 26 relative to emergency housing."

[20] The indeterminate extension of the date for the City to provide TEA and the possible homelessness and its implications on the right to housing as envisaged in section 26 of the Constitution should not create an impression that the rights of property Owners contemplated in terms of section 25 of the Constitution are bound to recede into the background.⁸ Nonetheless, it is my view that a proper case had been made for the variation of the order, granting the City more time to comply with the court order, or alternatively to explain to the court their inability to comply. Even though some explanation was made in the City's affidavit, the deponent to the affidavit suggested that further clarity needs to be offered.⁹

[21] Regarding the application for contempt filed by the Owner, the City's counsel correctly argued that there are no applications that should be considered inherently urgent. The claim that the contempt of court was initiated simply because the Occupiers requested a variation is unsustainable. It appears to have been triggered by the City's

⁶ The court should not find itself indirectly providing reinforcement to litigants for failure to respect court orders.

⁷ *Charnell Commando and Others v City of Cape Town and Another* (CCT 49/23) [2024] ZACC 27; 2025 (3) BCLR 243(CC); 2025 (3) SA 1 (CC) (20 December 2024) at para 84; *City of Johannesburg Metropolitan Municipality and Other v Occupiers [of portion 9 [...] of the farm Randjesfontein No 4 [...]] and Others* (636/23) [2025] ZASCA 47; [2025] 3 All SA 1 (SCA).

⁸ See *ABSA Bank Bpk v Murray and Another* (8946/02) [2003] ZAWCHC 48; 2004 (1) BCLR 10 (C); 2004 (2) SA 15 (C) (18 September 2003).

⁹ The City requested an opportunity to provide further explanation if so required. See para 8.1. of the answering affidavit at 036-11 and para 8.2 and 9.1 of the City's supplementary affidavit at 037-9. The City further stated that "I would have loved to provide to the honourable court a full and a comprehensive report, one which will give a full and a clear picture of the problem that we are seating with. Time did not allow".

failure to comply with an order requiring compliance by 10 March 2026. The Owner served the papers on 13 March 2026 for the matter scheduled for 17 March 2026. There is no explanation why the City were given those extremely shortened *dies*, and as a result, the urgency is construed as self-created. The directives require a litigant to set the matter for Tuesday, with all pleadings filed on a Thursday before. When necessary, a party may deviate from this requirement with persuasive reasons and give the other party two hours' notice. The Owner has not provided a convincing reason for non-compliance with the directives.¹⁰

[22] In support of the application, contending that no substantial redress would be obtained in due course, the Owner stated that the court directed that security services should be maintained at the property. This was found to be incorrect as the order to retain security services was coupled with a proviso that the costs should be covered by the City.

Conclusion.

[23] I therefore find that the City officials should have the opportunity to appear before the court and explain their failure to comply with the order to provide accommodation to the Occupiers. At the same time, the eviction order should be varied and extended for one month. It is shortened because the City has indicated it would not comply with the order anyway, and the legal representatives stated that their intention is to seek rescission or variation of the order requiring the City to provide accommodation.

[24] I also find that the application for contempt of court, while it could have merit, was issued with extremely short deadlines without valid reasons, and therefore the urgency as set out is unwarranted and the application should be struck off the urgent roll.

Costs

[25] The costs will follow the results.

Order

[26] As a result, I made an order as set in paragraph 1 above.

¹⁰ See *South African Airways SOC v BDFM Publishers (Pty) Ltd and Others* (2015/33205) [2015] ZAGPJHC 293; [2016] 1 All SA 860 (GJ); 2016 (2) SA 561 (GJ) (17 December 2015).

M V Noko
Judge of the High Court

Date of hearing: 17 February 2026

Date of judgment: 9 April 2026.

Appearances:

Application for Variation

For the Applicants:

Nkosi, instructed by SERI.

For the first Respondent:

S Redman SC with A Saldulker,
instructed by Le Roux Vivier
Attorneys.

For the second respondent:

Ralikhuvana N, instructed by Prince
Mudau and Associates.

Application for contempt of court

For the applicant:

S Redman SC with A Saldulker,
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For the second to the fifth Respondent:

Ralikhuvana N, instructed by Prince
Mudau and Associates.